

effect, awarding damages to one party for a breach of contract. We lack the authority to award money damages. If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties. (Order No. PSC-96-1579-FOF-TP, pp.74-75)

Summary of MCI's Proposed Language and Rational

If BST fails to meet established performance standards, MCIm will be damaged. In this case, MCIm should be eligible for credits. Attachment 10 specifies each type of credit to be applied in the case of failure. For example, if BST fails to meet a due date, the credit is termed a "Delay Credit." If BST does not meet a performance standard, the credit is termed a "Performance Failure Credit." Attachment 10 also specifies what the credit amount will be. In addition, a provision is included that enables MCIm to seek injunctive relief, and requires BST (i) to cause the service ordered by MCIm to meet the Performance Standards specified by this Agreement, (ii) install or provision service ordered by MCIm within the Due Dates specific in this Agreement and (iii) to provide Subscriber Usage Data in accordance with this Agreement.

According to MCI, laws that provide no penalty for non-compliance seldom achieve their goals. If BST is allowed into the long distance market, it will have little incentive to honor its obligations under this contract in the absence of some easily enforceable compliance incentive, such as the credits proposed below. According to MCIm, BST disagrees entirely with MCIm's proposed performance measures and credits, but as yet has not developed a counter proposal to the MCIm language. MCIm asserts that drawing on its unique experience in breaking up a monopoly telecommunications market, and from its experience as a customer of BST's access services, it knows that a contract that does not have compliance incentives will not allow new entrants to provide real competition to ILECs as envisioned by the Telecommunications Act of 1996.

MCIm argues that in each case of a standard, as defined in Attachment VIII, not being met, MCIm and its affected subscribers will not have received the services purchased from BST within the agreed upon parameters for delivering those services. According to MCIm, should failures occur frequently, MCIm will suffer the additional disadvantage of not being able to accurately advise subscribers or its own personnel as to when BST services will be

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performed and completed. MCI concludes that its system of credits makes BST's compliance with these standards, which are essential to achieving parity, a rational economic choice.

MCIm asserts that credits immediately and directly compensate MCIm for its direct damages resulting from the decreased value of services received, marketing opportunities missed, etc. Further, they are not liquidated damages, as repetitive or targeted failures by BST could have negative consequences for MCIm's operations and reputation far exceeding the amount of compensation provided. MCIm states that BST has yet to make a firm proposal for credits and performance standards, and it has not yet provided specifics on intervals that MCIm can expect to provide to its customers. MCIm argues that for competition to be on a level playing field it must have clearly defined time frames for when services will be delivered, standards for how they will be delivered, and a compliance incentive/noncompliance compensation mechanism that is more efficient and practical than litigating every contract breach.

Upon consideration, we find our language in Order No. PSC-96-1579-FOF-TP, is clear. We determined that our arbitration responsibilities under the Act encompassed only those areas enumerated in Sections 251 and 252 and matters necessary to implement those items. Accordingly, the parties shall not include MCIm's Attachment 10 in the arbitration Agreement. If the parties reach agreement on a compensation arrangement for missed performance standards, however, the Agreement shall be filed for approval pursuant to Section 252.

IV. CONCLUSION

We have reviewed the Agreement submitted to us by BellSouth and MCIm pursuant to the directives and criteria of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252. We believe our decisions herein on the Agreement and the disputed language comport with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been stayed pending appeal, and the applicable provisions of Chapter 364, Florida Statutes.

V. BELLSOUTH'S MOTION FOR EXTENSION OF TIME

On March 5, 1997, BellSouth filed a Motion for Extension of Time to file its Agreement with MCIm. Specifically, BellSouth requests that we grant it an extension of time to file the signed arbitrated Agreement until 14 days after we issue our Order memorializing our decision at the February 21, 1997, Special Agenda

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Conference. MCI filed a response in opposition to BellSouth's Motion on March 7, 1997.

In support of its Motion, BellSouth states that the Commission's extensive discussion at the Special Agenda Conference has created some confusion on the part of BellSouth as to the Commission's ultimate decisions and has engendered divergent views as to the decisions reached. Therefore, according to BellSouth, completing the final language of the arbitrated Agreement is impossible for BellSouth. BellSouth asserts that the Order which reflects the Commission's decisions at the agenda conference should aid in achieving the appropriate language to be included in the final arbitrated Agreement.

MCI argues that while there was considerable discussion by the Commission of the staff's recommendation, MCI believes that the Commission's rulings on the motions for reconsideration and the disputed contract language, as reflected in the motions adopted by the Commission, are clear.

MCI states that it has two local switches in place in Florida. MCI argues that further delay in finalizing the arbitrated Agreement will have an adverse impact on MCI's entry into the local markets and will provide BellSouth with an additional time period during which it will continue to be sheltered from competition. According to MCI, BellSouth has refused to finalize the arbitrated Agreement unless the Commission determines that the filing deadline should be extended until after the issuance of an order reflecting the decisions made on February 21, 1997. Therefore, MCI urges the Commission to act as soon as possible to deny BellSouth's request.

MCI further states that if the Commission determines to extend the deadline until after the issuance of the order reflecting the decisions made on February 21, 1997, it opposes allowing the additional two weeks after that date. MCI believes that the Commission's decisions have already been accurately incorporated in the current draft of the Agreement based on the results of the agenda conference, and that additional effort, if any, required to make the Agreement conform to the Commission's order could be finished in five business days or less following issuance of the order.

Upon consideration, we find that this request is appropriate. We, therefore, grant BellSouth's Motion for Extension of Time.

It is, therefore,

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ORDERED by the Florida Public Service that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the portions of the Agreement agreed to and submitted by BellSouth Telecommunications, Inc. and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCIm), identified in Attachment A to this Order, which is by reference incorporated herein, are approved to the extent set forth in the body of this Order. It is further

ORDERED that the information contained in Attachment B to this Order, which is by reference incorporated herein, is rejected and shall not be included in the Agreement as discussed in the body of this Order. It is further

ORDERED that, with respect to those portions of the Agreement which were arbitrated and the parties were unable to agree, they shall include the approved language set forth in the body of this Order into their Agreement. It is further

ORDERED that BellSouth's Motion for Extension of time is granted. It is further

ORDERED that this docket shall remain open until the parties file the signed Agreement incorporating our decisions herein.

By ORDER of the Florida Public Service Commission, this 21st day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn
Chief, Bureau of Records

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MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47-U.S.C. § 252(e)(6).

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Attachment A
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Commission Approved Language

Attachment	Section	Title
Part A	1.1 (except for reference to Attachment X)	General Terms and Conditions - Scope of the Agreement
Part A	1.2 (except for 2nd and 3rd paragraph)	Scope of the Agreement
Part A	2	Regulatory Approval
Part A	3	Term of Agreement
Part A	4	Charges and Payment
Part A	5	Assignment and Subcontract
Part A	6	Compliance with Laws
Part A	7	Governing Law
Part A	8	Relationship of Parties
Part A	9	No Third Party Beneficiaries
Part A	10	Intellectual Property Rights and Indemnification
Part A	13	Continuing Obligations
Part A	14	Notices
Part A	15.1, 15.3	Remedies
Part A	16	Waivers
Part A	17	Survival
Part A	18	Force Majeure
Part A	20.1	Termination
Part A	21	Confidentiality and Publicity
Part A	23	Dispute Resolution Procedures
Part A	24	Bona Fide Request Process for Further Unbundling

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Attachment	Section	Title
Part A	25.1-25.6	Branding
Part A	26	Taxes
Part A	27	Responsibility for Environmental Contamination
Part A	28	Amendments and Modifications
Part A	29	Severability
Part A	30	Headings Not Controlling
Part A	31	Entire Agreement
Part A	32	Counterparts
Part A	33	Successors and Assigns
2	1-4	Local Resale
3	1-12, 14-17	Network Elements
3	13.4.2.24, 13.4.3-13.8.9	Service Control Points/Databases
4	1-2.1, 2.3, 3-8	Interconnection
5	1-4	Collocation
6	1.1.1-1.1.27 1.1.29-1.1.30	Rights of Way (ROW), Conduits and Pole Attachments - Definitions
6	1.2.1-1.2.5 1.2.7-1.2.9.4 1.2.10	Scope
6	1.3.1-1.3.6.6 1.3.6.8-1.3.9.2 1.3.10-1.3.13	Requirements and Specifications
6	1.4.1-1.4.3	Additional Legal Requirements
6	1.5.1-1.5.2.1 1.5.3-1.5.6	Facilities & Licenses
6	1.6.1-1.6.2.3 1.6.4	Processing of Applications
6	1.7	Issuance of Licenses

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Attachment	Section	Title
6	1.8	Construction of MCIm Facilities
6	1.9	Use and Routine Maintenance of MCIm's Facilities
6	1.10	Modification and Replacement of MCIm's Facilities
6	1.11	Rearrangement of Facilities at the Request of Another
6	1.12	Emergency Repairs and Pole Replacements
6	1.13	Inspect. by BST of MCIm Facility
6	1.14	Notice of Noncompliance
6	1.15	Unauthorized Occupancy or Utilization of BST's Facilities
6	1.16	Removal of MCIm's Facilities
6	1.17	Fees, Charges, and Billing
6	1.18	Advance Payment and Imputation
6	1.19	Assurance of Payment
7	1-4	Number Portability
8	1	Business Process Requirements - General Business Requirements
8	2.1.1-2.1.5.2 2.1.5.5-2.1.8	Ordering and Provisioning - General Business Requirements
8	2.2	Service Order Process Requirements
8	2.3.25, 2.3.27- 2.3.3	Systems Interfaces and Information Exchanges
8	2.4	Standards
8	3.1-3.3	Connectivity Billing and Recording

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Attachment	Section	Title
8	4.1-4.4	Provision of Subscriber Usage Data
8	5.1-5.3	Maintenance
8	6.1-6.1.3.3.3.2 6.1.3.3.3.4- 6.1.3.14 6.1.3.16-6.1.4.1 6.1.4.1.2-6.1.6	Miscellaneous Services & Functions - General Requirements
8	6.2-6.2.2.7	Systems Interfaces and Exchanges
9	1, 2, 4	Security Requirements

Attachment B

Sections to be Excluded from the Agreement

Attachment	Section	Title
Part A	1.1 (except for reference to Attachment X)	General Terms and Conditions - Scope of the Agreement
Part A	1.2 (except for 2nd and 3rd paragraph)	Scope of the Agreement
Part A	11	Limitation of Liability and Indemnification
Part A	12	Limitation of Liability
Part A	15.2	Remedies
Part A	19	Non-Discriminatory Treatment
Part A	20.2	Termination
Part A	22	Audits and Examinations
Part A	25.7	Branding
4	2.2.2	Compensation Mechanisms
6	1.2.6	BST's Rights to Convey Property
6	1.3.6.7	Requirement & Specifications
6	1.3.9.3 1.3.9.4	Compliance with Environmental Laws
6	1.5.2.2	Determination of Availability
6	1.6.3	Processing of Applications
8	6.1.3.3.3.3	Miscellaneous Services & Functions
9	3	Revenue Protection